

In re POLYURETHANE FOAM ANTITRUST LITIGATION)	MDL Docket No. 2196 Index No. 10-MD-2196 (JZ)
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This document relates to:)	
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ALL DIRECT PURCHASER CLASS ACTIONS)	
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The Direct Purchaser Class (“Plaintiffs” or the “Class”) respectfully requests that this Court enter the [Proposed] Order to Approve Distribution of Settlement Funds for Payment of Notice Fees for the Direct Purchaser Settlement Classes, pursuant to ¶ 6(a) of the Settlement Agreement Between Direct Purchaser Class Plaintiffs and Defendant Leggett & Platt, Incorporated (the “L&P Settlement Agreement”); ¶ 5(a) of the Settlement Agreement Between Direct Purchaser Class and Defendants Carpenter Co., E.R. Carpenter, L.P., and Carpenter Holdings, Inc. (the “Carpenter Settlement Agreement”); ¶ 6(b) of the Settlement Agreement Between Direct Purchaser Class and Defendant FFP Holdings, LLC (f/k/a Flexible Foam Products, Inc.) (the “FFP Settlement Agreement”); ¶ 6(c) of the Settlement Agreement Between Direct Purchaser Class and Defendant Future Foam, Inc. (the “Future Foam Settlement Agreement”); ¶¶ 6(e) & 9 of the Settlement Agreement Between Direct Purchaser Class and Defendant Foamex Innovations, Inc. (the “FXI Settlement Agreement”); ¶¶ 6(e) & 8 of the Settlement Agreement Between Direct Purchaser Class and Defendant Hickory Springs Manufacturing Company (the “Hickory Springs Settlement Agreement”); ¶ 8 of the Settlement Agreement Between Direct Purchaser Class and Defendant Mohawk Industries, Inc. (the

“Mohawk Settlement Agreement”); and ¶ 7 of the Settlement Agreement Between Direct Purchaser Class and Defendants Woodbridge Foam Corporation, Woodbridge Sales & Engineering, Inc., and Woodbridge Foam Fabricating, Inc. (the “Woodbridge Settlement Agreement”).

ARGUMENT

1. Notice Expenses Under the Carpenter and L&P Settlement Agreements

After this Court preliminarily approved the Carpenter and L&P Settlement Agreements (Dkts. 1391, 1406) Garden City Group (“GCG”), the claims administrator, provided class members with notice of these settlements. Dkt. 1475-1 (Dowd February 2, 2015 Declaration, describing notice program). This notice program was extensive, including the following:

- Direct mail to over 48,624 customers as provided by certain Defendants and Co-Conspirators.
- Publication of a short-form notice in trade publications specifically targeting the relevant industries.
- Online banner advertising on highly trafficked websites
- A neutral press release in both English and Spanish over PR Newswire within the United States as well as over targeted manufacturing microlists
- An informational website (www.flexiblepolyurethanfoamsettlement.com), on which the notice, the Settlement Agreements, and other important Court documents were posted; and
- A toll free information line, 1-888-331-9196, where Class Members could call 24/7 for more information, and request a copy of the Court-approved long-form notice, among other things.

Dkt. 1475-1 at 3. On February 26, 2015, after the notice program was complete and a Final Approval hearing was held, this Court granted final approval to Plaintiffs’ settlements with Carpenter and L&P. Dkt. 1534. On August 5, 2015, the Direct Purchaser Class filed a Motion and Memorandum in Support for Order to Approve Distribution of Settlement Funds and Payment of Notice Fees for the Direct Purchaser Settlement Class seeking to authorize payment

to GCG for costs then incurred in the amount of \$396,508.77 from the Carpenter settlement and \$146,133.59 from the L&P settlement. Dkt. 1868. The Court granted the motion on August 7, 2015. Dkt. 1872.

Since that motion, GCG has incurred \$16,740.26 in additional costs related to the Carpenter and L&P notice programs. On a pro rata basis, these costs include \$12,232.11 for services rendered in conjunction with distributing notice to the Carpenter settlement class, and \$4,508.15 for services rendered in conjunction with distributing notice to the L&P settlement class. Ex. 1, Declaration of Adam Wolfson, ¶¶ 3-4. The services rendered for each settlement included: notice dissemination; database management; data entry including entering relevant names and addresses into database; processing emails; imaging; document management and storage, including sorting, preparing, scanning, and processing mail, including undeliverable email; claim validation, including processing claims and deficiency responses and handling and processing exclusions; management of the call center, and handling of class member communications; and website services including monthly maintenance. *Id.*

Both the Carpenter and L&P Agreements provide that a portion of the settlement proceeds can be utilized for Court approved class notice expenses. The Carpenter Settlement Agreement states that the Carpenter Defendants’ “initial payment to the Escrow Account in the amount of Twenty Million Dollars (\$20,000,000)” can “be used on a pro-rata basis with other settlement amounts paid by other settling defendants, subject to approval of the Court, for Court-approved class notice expenses.” Dkt. 1400-2 (Carpenter Settlement Agreement ¶ 5(a)). The L&P Settlement Agreement states that Leggett & Platt’s initial payment into the Escrow Account “in an amount equal to \$4,000,000” can “be used on a pro-rata basis with other settlement

amounts paid by other settling defendants, subject to approval of the Court, for the payment of Court-approved class notice expenses.” Dkt. 1379-2 (L&P Settlement Agreement ¶ 6(a)).

2. Notice Expenses Under the FXI, Hickory Springs, Mohawk, FFP, Future Foam, and Woodbridge Settlement Agreements

After this Court preliminarily approved the FFP, Future Foam, FXI, Hickory Springs, Mohawk, and Woodbridge Settlement Agreements (Dkt. 1703) Garden City Group (“GCG”), the claims administrator, provided class members with notice of these settlements. Dkt. 1828-2 (Dowd July 16, 2015 Declaration, describing notice program). This notice program was similarly extensive to the Carpenter and L&P Settlements, and included:

- Direct mail to over 47,743 customers as provided by certain Defendants and Co-Conspirators.
- Publication of a short-form notice in trade publications specifically targeting the relevant industries.
- Online banner advertising on highly trafficked websites
- A neutral press release in both English and Spanish over PR Newswire within the United States as well as over targeted manufacturing microlists
- An informational website (www.flexiblepolyurethanfoamsettlement.com), on which the notice, the Settlement Agreements, and other important Court documents were posted; and
- A toll free information line, 1-888-331-9196, where Class Members could call 24/7 for more information, and request a copy of the Court-approved long-form notice, among other things.

Dkt. 1828-2 at ¶¶ 8-19. On November 19, 2015, after the notice program was complete and a Final Approval hearing was held, this Court granted final approval to Plaintiffs’ settlements with FFP, Future Foam, FXI, Hickory Springs, Mohawk, and Woodbridge. Dkt. 1971.

To date, GCG has incurred costs in the amount of \$546,097.38 in executing the notice programs under the FXI, Hickory Springs, Mohawk, FFP, Future Foam, and Woodbridge settlements. On a pro rata basis, these costs include \$118,940.01 for services rendered in conjunction with distributing notice to the FXI settlement class, \$38,663.69 for services rendered

in conjunction with distributing notice to the Hickory Springs settlement class, \$194,246.84 for services rendered in conjunction with distributing notice to the Mohawk settlement class, \$31,728.26 for services rendered in conjunction with distributing notice to the FFP settlement class, \$63,401.91 for services rendered in conjunction with distributing notice to the Future Foam settlement class, and \$99,116.67 for services rendered in conjunction with distributing notice to the Woodbridge settlement class. Ex. 1 ¶¶ 5-6. As with the Carpenter and L&P Settlements, the services rendered by GCG in each of the final six settlements included: notice dissemination; database management; data entry including entering relevant names and addresses into database; processing emails; imaging; document management and storage, including sorting, preparing, scanning, and processing mail, including undeliverable email; claim validation, including processing claims and deficiency responses and handling and processing exclusions; management of the call center, and handling of class member communications. *Id.*

Each of the FXI, Hickory Springs, Mohawk, FFP, Future Foam, and Woodbridge settlement agreements provide that a portion of the settlement proceeds can be utilized for Court approved class notice expenses. The FXI Settlement Agreement provides that up to \$500,000 of FXI's \$60,000,000 payment into the Escrow Account "can be used for payment of any court-approved class notice expenses." FXI Settlement Agreement ¶¶ 6(c) & 9 (providing that settlement funds cover notice expenses after final approval). The Hickory Springs Settlement Agreement also states that "up to \$500,000 of the Settlement Amount [of \$19,500,000] can be used for payment of any court-approved class notice expenses." Hickory Springs Settlement Agreement ¶ 6(e). Similarly, the Mohawk Settlement Agreement states that "[a]fter Final Approval has been obtained, and Mohawk's right of recession under paragraph 14 cannot be exercised or has been expressly waived, and with Court approval, all reasonable costs and

expenses associated with printing, mailing, and publication of such notice and with administering the Settlement ... may be paid out of the Settlement Fund. Mohawk Settlement Agreement ¶ 8. The FFP Settlement Agreement allows that of the FFP payment “in an amount equal to \$16,000,000[,] ... up to \$500,000 ... can be used for payment of any court-approved class notice expenses.” FFP Settlement Agreement ¶¶ 6(a) & (b). The Future Foam Settlement Agreement provides that “up to \$500,000 of the Settlement Amount [of \$32,000,000] can be used for payment of any court-approved class notice expenses.” Future Foam Settlement Agreement ¶ 6(c). Finally, the Woodbridge Settlement Agreement provides that “[a]fter or simultaneous with Final Approval, Co-Lead Counsel may seek to obtain from the Escrow Account, with Court approval, any remaining or additional reasonable costs and expenses associated with notice and administering the Settlement.” Woodbridge Settlement Agreement ¶ 7.

3. The Court Should Authorize the Payment of GCG’s Notice Expenses

Given GCG’s expenses to date (as demonstrated in Exhibits A and B hereto) in conjunction with the settlement agreement provisions cite above, Plaintiffs respectfully request that the Court enter the [Proposed] Order to Approve Distribution of Settlement Funds for Payment of Notice Fees for the Direct Purchaser Settlement Classes in the *pro rata* amounts of: \$12,232.11 from the Carpenter settlement; \$4,508.15 from the L&P settlement; \$118,940.01 from the FXI settlement; \$38,663.69 from the Hickory Springs settlement; \$194,246.84 from the Mohawk settlement; \$31,728.26 from the FFP settlement; \$63,401.91 from the Future Foam settlement; \$99,116.67 from the Woodbridge settlement.

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